

STATE OF MICHIGAN
COURT OF APPEALS

FRED D. FOLTS and JANISE A. FOLTS,

Plaintiffs-Appellants,

v

CIGNA INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

August 6, 1999

No. 210163

Genesee Circuit Court

LC No. 97-058405 CZ

Before: Holbrook, Jr., P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition. Upon de novo review of the trial court's dismissal of plaintiffs' complaint for failure to state a claim pursuant to MCR 2.116(C)(8), see *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998), we affirm.

Plaintiffs argue on appeal that the trial court erred in granting summary disposition of their claims of intentional infliction of emotional distress, gross negligence, and negligence, where they had alleged that defendant failed to pay worker's compensation benefits in a timely manner, filed various petitions in the Bureau of Worker's Disability Compensation seeking verification of plaintiff Fred Folts' continuing disability and the reasonableness and necessity of certain medical benefits, failed to comply with orders issued by the Bureau, and otherwise mismanaged their worker's compensation claim. We conclude that plaintiffs' claims were properly dismissed.

Michigan does not recognize a tort cause of action for bad faith breach of an insurance contract, *Kewin v Massachusetts Mutual Life Ins Co*, 409 Mich 401, 419-421; 295 NW2d 50 (1980), and our Supreme Court has declined to decide if a separate tort of intentional infliction of emotional distress against an insurer exists, *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 605; 374 NW2d 905 (1985). Here, even accepting the factual allegations in plaintiffs' complaint as true, plaintiffs have not alleged any active negligence or misfeasance by defendant distinct from its alleged breach of contract. Accordingly, as a preliminary matter, we are compelled to conclude that plaintiffs' negligence and gross negligence claims were properly dismissed for failure to state a claim on which relief could be granted. MCR 2.116(C)(8).

As to plaintiffs' intentional infliction of emotional distress claim—and assuming for purposes of this appeal that such a cause of action does indeed exist—liability is limited to situations where “the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.” *Roberts, supra* at 602-603. While defendant's conduct may have been less than laudable, we are unable to say that it meets the formidable threshold of extreme and outrageous conduct. *Id.*; *Atkinson v Farley*, 171 Mich App 784, 788-789; 431 NW2d 95 (1988). Accordingly, plaintiffs' intentional infliction of emotional distress claim was properly dismissed. MCR 2.116(C)(8).

Plaintiffs also argue that the trial court erred in granting summary disposition as to their request for injunctive relief pursuant to MCL 418.863; MSA 17.237(863). We disagree. At the expiration of an appeal period, an order of the Bureau of Worker's Disability Compensation is final and enforceable as a judgment in circuit court. MCL 418.863; MSA 17.237(863). *Riley v Northland Geriatric Center*, 431 Mich 632, 729; 433 NW2d 787 (1988) (Boyle, J, concurring). Assuming, without deciding, that a circuit court is vested with jurisdiction to grant injunctive relief regarding a final order of the Bureau, we would find that plaintiffs in this case were not entitled to such relief. During oral argument on defendant's motion for summary disposition, plaintiffs' counsel conceded, or at least led the trial court to believe, that the only outstanding dispute with regard to orders issued by the Bureau was related to future expenses associated with a hot tub. Given that the Bureau's January 19, 1993, order directed defendant to provide plaintiff Fred Folts with a hot tub for his home, but did not expressly require defendant to pay maintenance and operational costs associated with the hot tub, the Bureau's order was subject to interpretation, which is within the exclusive jurisdiction of the Bureau. MCL 418.841(1); MSA 17.237(841)(1). See *Holcomb v Ford Motor Co*, 108 Mich App 61, 67; 310 NW2d 275 (1981). The circuit court has no jurisdiction to interpret or amend a final order issued by the Bureau.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Peter D. O'Connell

/s/ Brian K. Zahra